



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2020-0531]

RIN 1625-AA11

### Regulated Navigation Area; NW Natural PGM Site, Willamette River, Portland OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is establishing a regulated navigation area (RNA) at the NW Natural PGM Site on the Willamette River in Portland, OR. This action is necessary to preserve the integrity of an engineered sediment cap as part of an Oregon Department of Environmental Quality (DEQ) required remedial action. This regulation prohibits persons and vessels from activities in the RNA that could disturb or damage the engineered sediment cap unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0531 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Sean Morrison, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, e-mail [D13-SMB-MSUPortlandWWM@uscg.mil](mailto:D13-SMB-MSUPortlandWWM@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port,
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
PGM	Portland Gas Manufacturing
RNA	Regulated Navigation Area
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

On October 19, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Regulated Navigation Area; NW Natural PGM Site, Willamette River, Portland, OR” (85 FR 66292). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this regulated navigation area (RNA). During the comment period that ended November 18, 2020, we received 1 comment.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Coast Guard is establishing a RNA to protect the engineered sediment cap located at the NW Natural PGM Site on the Willamette River in Portland, OR. This sediment cap is part of an Oregon Department of Environmental Quality (DEQ) required remedial action. The engineered sediment cap is designed to be compatible with normal vessel operations, but could be damaged by other maritime activities including anchoring, dragging, dredging, grounding of vessels, deployment of barge spuds, etc. Such damage could disrupt the function or impact the effectiveness of the cap to contain the underlying contaminated sediment and soil in these areas.

The purpose of this rulemaking is to prevent disruption of the sediment cap which may result in hazardous conditions and harm to the marine environment. As such, this

RNA is necessary to help ensure the sediment cap is protected and will do so by prohibiting maritime activities that could disturb or damage it.

#### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received 1 comment on our NPRM published October 19, 2020. The commenter expressed support in establishing this RNA to protect the cap on sediment in the Willamette River, noting that if the sediment were to increase in the Willamette River there is potential for flooding and other negative effects on users of the waterway. Accordingly, there are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a RNA adjacent to the NW Natural PGM Site on the Willamette River in Portland, OR encompassing all waters above the sediment cap. The RNA prohibits activities which could disrupt or damage the sediment cap on the riverbed such as anchoring, dragging, dredging, trawling, or other related activities. The rule also specifies that operators who wish to engage in dredging, spudding, and vessel anchoring within the RNA must consult with Oregon DEQ and obtain prior approval from the COTP to prevent exposure of buried contamination and/or damage to the engineered sediment cap.

Additionally, this rule allows vessels or persons engaged in activities associated with remediation efforts in the NW Natural PGM Site to engage in dredging and related activities, provided that the COTP is given advance notice of those activities by Oregon DEQ.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process.

This regulatory action determination is based on the fact that the RNA is limited in size and will not limit vessels from transiting or using the waters covered, except for specified activities that may damage the engineered sediment cap. Additionally, operators who wish to engage in dredging, spudding, and vessel anchoring within the RNA must consult with Oregon DEQ and obtain prior approval from the COTP to prevent exposure of buried contamination and/or damage to the remedial cap.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons stated in section V.B above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction

and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the creation of a RNA that prohibits certain maritime activities to protect an engineered sediment cap. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.1343 to read as follows:

**§ 165.1343 Regulated navigation area; NW Natural PGM Site, Willamette River, Portland, OR.**

(a) *Location.* The following area is a regulated navigation area (RNA): All navigable waters of the Willamette River adjacent to the NW Natural Portland Gas Manufacturing (PGM) site, encompassed by a line connecting the following points beginning at 45°31'33.8" N, 122°40'11.6" W; thence to 45°31'33.9" N, 122°40'11.2" W; thence to 45°31'32.7" N, 122°40'10.7" W; thence to 45°31'32.9" N, 122°40'09.4" W; thence to 45°31'32.2" N, 122°40'08.8" W; thence to 45°31'32.2" N, 122°40'07.9" W; thence to 45°31'31.4" N, 122°40'07.6" W; thence to 45°31'30.9" N, 122°40'10.7" W; and along the shoreline back to the beginning point. These coordinates are based on North American Datum 83 (NAD 83). Geographically this location starts on the west bank of the Willamette River at approximately river mile 12.2, 100 yards south of the Steel Bridge.

(b) *Regulations.* In addition to the general RNA regulations in § 165.13, the following regulations apply to the RNA described in paragraph (a) of this section.

(1) Sediment disturbance activities including dredging, spudding, and vessel anchoring require advance consultation with the Oregon Department of Environmental Quality and obtain prior approval from the Coast Guard Captain of the Port Sector

Columbia River (COTP) to prevent exposure of buried contamination and/or damage to the remedial cap. Contact Oregon DEQ at 503-229-5245, or alternatively, call 811 prior to any sediment disturbance activity. Any work within 10 feet of the seawall is prohibited unless there is advance consultation and approval by the City of Portland, DEQ and the COTP. All vessels and persons are prohibited from anchoring, dredging, laying cable, dragging, seining, bottom fishing, conducting salvage operations, or any other activity which could potentially disturb the riverbed in the designated area. Vessels may otherwise transit or navigate within this area.

(2) The regulations described in paragraph (b)(1) of this section do not apply to vessels or persons engaged in activities associated with remediation efforts in the NW Natural PGM Site, provided that the COTP is given advance notice of those activities by Oregon DEQ.

(c) *Contact information.* If you observe violations of the regulations in this section, you may notify the COTP by email, at D13-SMB-MSUPortlandWWM@uscg.mil.

Dated: November 24, 2021.

**M. W. Bouboulis,**

*RADM, U.S. Coast Guard,*

*Commander, Thirteenth Coast Guard District.*

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